

1 involved in a car accident with Courtney Spring on State Route 225
2 near the Wild Horse Recreation Area, Elko, County, Nevada. Plaintiff
3 was the permissive driver of the truck owned by Doug Smith. Doug
4 Smith had a personal automobile insurance policy with Farmers
5 Insurance Group, issued in Idaho, which had underinsured motorist
6 limits of \$100,000. Plaintiff also had a personal automobile
7 insurance policy with Oregon Mutual, issued in Idaho, covering
8 plaintiff as an insured and had underinsured motorist limits of
9 \$100,000. Plaintiff's medical expenses resulting from the accident
10 exceed \$99,728.32 and his loss of earnings exceed \$96,492.64. On
11 November 15, 2011, plaintiff filed suit against Courtney Spring. On
12 June 13, 2013, plaintiff received the liability limits of \$100,000
13 from Courtney Spring. Plaintiff alleges that "[t]he difference in
14 limits or offset underinsured motorist coverage required the first
15 \$100,000 of the \$200,000 underinsured motorist coverage available to
16 Plaintiff to be offset against the \$100,000 liability limits paid by
17 Courtney Spring through his personal automobile liability insurance
18 policy, thereby providing \$100,000 in underinsured motorist benefits
19 available to Plaintiff as compensation for his serious and permanent
20 injuries." (ECF No. 1 at ¶ 17).

21 On August 25, 2016, Plaintiff filed a complaint requesting
22 declaratory relief regarding whether the automobile insurance policy
23 provided by Oregon Mutual provides \$100,000 underinsured motorist
24 coverage to plaintiff for the injuries plaintiff sustained as a result
25 of a June 30, 2011 accident. (ECF No. 1). The complaint states that
26 there is diversity jurisdiction pursuant to 28 U.S.C. § 1332 and that
27 venue is appropriate in this district pursuant to 28 U.S.C.
28 § 1391(b)(2) because a substantial part of the events or omissions

1 giving rise to the claim occurred in this district.

2 **II. Motion to Transfer Venue**

3 The court first addresses the Oregon Mutual's motion to transfer
4 venue pursuant to 28 U.S.C. § 1404(a). Section 1404 establishes that
5 "[f]or the convenience of parties and witnesses, in the interest of
6 justice, a district court may transfer any civil action to any other
7 district or division where it might have been brought." 28 U.S.C.
8 § 1404(a). The moving party bears the burden of showing that an
9 adequate alternative forum exists. *Jones v. GNC Franchising, Inc.*,
10 211 F.3d 495, 499 n. 22 (9th Cir. 2000).

11 Motions to transfer under § 1404(a) are adjudicated through an
12 "individualized, case-by-case consideration of convenience and
13 fairness." *Id.* at 498 (quoting *Stewart Org. Inc. v. Ricoh Corp.*, 487
14 U.S. 22, 29 (1988)). In determining whether transfer is appropriate
15 in a particular case, the court is required to weigh multiple factors.

16 For example, the court may consider: (1) the location
17 where the relevant agreements were negotiated and
18 executed, (2) the state that is most familiar with the
19 governing law, (3) the plaintiff's choice of forum, (4)
20 the respective parties' contacts with the forum, (5) the
21 contacts relating to the plaintiff's cause of action in
the chosen forum, (6) the differences in the costs of
litigation in the two forums, (7) the availability of
compulsory process to compel attendance of unwilling non-
party witnesses, and (8) the ease of access to sources of
proof.

22 *Id.* at 498-99.

23 **A. Action Could Have Been Brought in the District of Idaho**

24 Here, the action could have been brought in the United States
25 District Court for the District of Idaho, Southern Division. First,
26 venue is proper because substantial conduct giving rise to the claim
27 occurred in Idaho-the insurance contract was executed in Idaho and the
28 alleged denial of coverage occurred in Idaho. See 28 U.S.C.

1 § 1391(b)(2). Second, the federal district court in Idaho has
2 personal jurisdiction over the defendant as Oregon Mutual has
3 sufficient minimum contacts with Idaho. Oregon Mutual does business
4 writing insurance policies in Idaho and executed the contract at issue
5 in Idaho. Finally, the parties do not dispute that the federal
6 district court in Idaho would have diversity jurisdiction over
7 plaintiff's claims.

8 **B. Convenience of the Parties and Interests of Justice**

9 **1. Where relevant agreements were negotiated and executed**

10 The only agreement at issue is the insurance contract entered
11 into between Oregon Mutual and Ronetta Smith. (ECF No. 5, Exhibit A).
12 The record reflects that this agreement was negotiated and executed
13 in Idaho. This factor therefore favors transfer.

14 **2. State most familiar with the governing law**

15 The parties agree that Idaho law applies to the interpretation
16 of the insurance contract. As an Idaho court would be more familiar
17 with the application of Idaho law, this factor favors transfer. See
18 *Decker Coal*, 805 F.2d at 843 (holding courts may consider "the
19 interest in having the trial of a diversity case in a forum that is
20 at home with the law that must govern the action").

21 **3. Plaintiff's choice of forum**

22 Plaintiff filed this action in Nevada. Therefore this factor
23 weighs against transfer.

24 **4. Parties' Contacts with Nevada**

25 Plaintiff is an Idaho resident, but was temporarily employed in
26 Nevada at the time of the accident. Oregon Mutual is an Oregon
27 corporation whose principal place of business is Oregon. Oregon
28 Mutual's present business activity in Nevada is limited solely to

1 winding up any outstanding claims that occurred prior to the surrender
2 of its Certificate of Authority to do insurance business in Nevada.
3 Plaintiff resides in Idaho and Oregon Mutual negotiated and entered
4 into the insurance contract, the subject of this action, in Idaho.
5 Therefore the court concludes that the parties contacts' with Nevada
6 are not as substantial as those with Idaho.

7 **5. Parties' Contacts Relating to Prince's Claims**

8 Plaintiff's contacts with Nevada are limited. His only
9 connection to Nevada is that the accident triggering his request for
10 underinsured motorist covered occurred in Nevada. There is no
11 allegation that the wrongdoing that is the basis of the complaint
12 occurred in Nevada other than the fact that Oregon Mutual sent its
13 denial of underinsured motorist benefits to Nevada. Because the
14 parties' contacts with Nevada relating to plaintiff's claims are not
15 substantial and the actions that plaintiff complains of did not take
16 place here, this factor also favors transfer.

17 **6. Cost of Litigation**

18 Plaintiff is an Idaho resident and the contract was entered into
19 in Idaho. Oregon Mutual is an Oregon corporation and does business
20 in Oregon. Therefore it is more likely cost-effective for this action
21 to transfer to Idaho.

22 **7. Availability of Compulsory Process to Compel Witnesses**

23 No non-party witnesses have been identified as residing in
24 Nevada. Plaintiff represents that he does not anticipate the need to
25 depose any witnesses or to utilize compulsory process. (ECF No. 7 at
26 7). Accordingly, this factor is neutral.

27 **8. Access to Sources of Proof**

28 Plaintiff states that he has "most if not all the documentation

1 necessary to present this matter to the Court.” (ECF No. 7 at 7).
 2 This factor is therefore neutral.

3 **9. Additional Factor- Issue of Personal Jurisdiction**

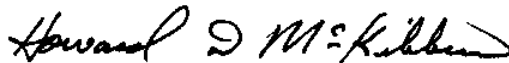
4 Idaho clearly has personal jurisdiction over Oregon Mutual.
 5 However, there is a substantial question whether this court has
 6 personal jurisdiction over Oregon Mutual. Because the court concludes
 7 that convenience and fairness weigh heavily in favor of a transfer it
 8 is unnecessary for the court to decide whether it has personal
 9 jurisdiction over Oregon Mutual.¹

10 **III. Conclusion**

11 In accordance with the foregoing, Oregon Mutual’s motion to
 12 transfer is granted. This action is hereby transferred to the United
 13 States District Court for the District of Idaho, Southern Division.
 14 The remaining motions raised in defendant’s omnibus motion (ECF No.
 15 5) are denied without prejudice to renew.

16 IT IS SO ORDERED.

17 DATED: This 28th day of March, 2017.

18 

19 UNITED STATES DISTRICT JUDGE

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 25 ¹ The court can transfer under § 1404(a) regardless of whether it has
 26 personal jurisdiction over the defendant. See *Sinochem Int’l Co. v.*
 27 *Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 425 (2007); *Goldlawr, Inc. v.*
 28 *Heiman*, 369 U.S. 463, 466-67 (1962); *Stanbury Elec. Eng’g, LLC v. Energy*
Prod., Inc., 2016 WL 3255003, at *1 (W.D. Wash. June 13, 2016); *Kawamoto v.*
CB Richard Ellis, Inc., 225 F. Supp. 2d 1209, 1211 (D. Haw. 2002) (“[T]his
 court may transfer venue under . . . § 1404(a) . . . without regard to
 whether it has personal jurisdiction over” the defendant.).